

Stephen G. Wilcox
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ATTORNEY FOR RV DEPOT OF CLEBURNE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
MARK RICE,	§	CASE NO. 23-42473-ELM-13
DEBTOR,	§	
	§	
RV DEPOT OF CLEBURNE,	§	
MOVANT,	§	
	§	
VS.	§	
	§	
MARK RICE	§	REQUESTING EXPEDITED HEARING
AND M&S TRANSPORT	§	
RESPONDENTS.	§	

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR, IN THE
ALTERNATIVE, REQUEST FOR ADEQUATE PROTECTION**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Greig Automotive VI, Inc. dba RV Depot of Cleburne fdba Automaxx ("RV Depot"), complaining of Mark Rice ("Debtor") and for cause of action would respectfully show the Court as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 157 and 11 U.S.C. §§ 362 and 1301. This is a core proceeding.
2. RV Depot is a corporation doing business in Texas. Debtor may be served at 752 W. Main, No. 1418, Mansfield, TX 76063. Co-Debtor M&S Transport may be served at 752 N. Main, No. 1418, Mansfield, TX 76063.
3. Debtor filed a petition pursuant to Chapter 13 of Title 11 on or about August 22, 2023. An Order for Relief was subsequently entered.
4. RV Depot is a secured creditor of the above-referenced Debtor by virtue of a security interest in the following vehicles ("Collateral"). The net contractual balance and contractual arrears are as of August 22, 2023:

VEHICLE	VIN	CONTRACT DATE	NET CONTRACTUAL BALANCE	CONTRACTUAL ARREARS
1993 International	2HSFHD6R0PC072942	September 14, 2021	\$3,402.24	\$2,428.00
2014 Peterbilt	1NPWD49X4ED241610	August 21, 2019	\$18,877.55	\$7,527.48
2014 Cottrell AC	5E0AA1440EG540001	August 21, 2019	\$20,219.93	\$8,128.40
2012 Peterbilt 388	1NPWD49X1CD155216	May 1, 2019	\$14,305.89	\$8,417.06
2012 Cottrell CX-7	5E0AC144XCG371502	May 1, 2019	\$12,756.19	\$7,300.00
2014 Peterbilt	1NPWE49X9ED241621	November 22, 2021	\$69,798.33	\$3,642.00

5. True and correct copies of the Contracts and Title are attached hereto as Exhibits and incorporated herein by reference.

6. Upon information and believe, Debtor has attempted to sell the 1993 International without authorization or having the Title.

7. RV Depot was contacted by Omar Gonzalez who indicated that he bought the 1993 International from Debtor for \$4,500.00 cash.

8. RV Depot did not consent to this alleged sale in violation of its security interest and Texas Title law.

9. Debtor has not filed Schedules, a Chapter 13 Plan, or an AAPD.

10. RV Depot is not adequately protected in that Debtor is dissipating its Collateral.

11. Further, RV Depot does not have insurance on the Collateral listing RV Depot as loss payee.

12. But for the automatic stay, RV Depot could and would foreclose its liens on the Collateral in which it holds a security interest.

13. RV Depot does not have and Debtor is not able to offer adequate protection of RV Depot's interest in the Collateral securing RV Depot's debt.

14. Cause exists to terminate the automatic stay because of Debtor's failure to comply with the requirements of Chapter 13.

15. Further cause may exist to terminate the automatic stay if the vehicles are not properly insured.

16. Because the collateral described herein depreciates and may not be insured, any Order either terminating or conditioning the automatic stay should be effective immediately and there should be no stay of the Order for fourteen days after the entry of the Order.

WHEREFORE, PREMISES CONSIDERED, RV Depot of Cleburne prays for:

1. An Order of this Court granting RV Depot relief from the automatic stay imposed pursuant to 11 U.S.C. § 362;
2. An Order of this Court authorizing RV Depot to take immediate possession of the Collateral which is the subject of this Motion and foreclose its lien on the collateral without further notice to the Debtor, the Trustee, or any other party in interest and authorizing RV Depot to obtain all writs and other court Orders necessary to obtain possession of its collateral if it is not voluntarily surrendered by Debtor;
3. In the alternative, an Order of this Court requiring Debtor to provide RV Depot with adequate protection of its interest in the collateral, including disclosing the location and condition of the Collateral, providing proof of insurance, providing adequate protection payments under 11 U.S.C. §1326, and paying RV Depot's costs and attorney's fees;
4. An Order of this Court finding that any Order entered with regard to this Motion should be effective immediately upon its entry and should not be stayed for fourteen days following the entry of said Order; and
5. For such other and further relief, both general and specific, to which RV Depot may show itself justly entitled.

Respectfully submitted,

/s/ Stephen G. Wilcox

Stephen G. Wilcox

State Bar Number 21454300

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ATTORNEY FOR RV DEPOT

OF CLEBURNE

NOTICE REGARDING REQUIRED ANSWER

PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT ELDON B. MAHON U.S. COURTHOUSE, 501 W. 10TH ST., FORT WORTH, TX 76102-3643 BEFORE CLOSE OF BUSINESS ON SEPTEMBER 14, 2023, WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE “ADEQUATELY PROTECTED” IF THE STAY IS TO BE CONTINUED.

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that prior to the filing of this Motion, I did the following:
My office contacted Debtor’s attorney’s office and was advised there was opposition to the motion.

/s/ Stephen G. Wilcox
Stephen G. Wilcox

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion for Relief from the Automatic Stay or, in the Alternative, Request for Adequate Protection was served by FIRST CLASS MAIL, POSTAGE PREPAID on:

Mark Rice
752 W. Main, No. 1418
Mansfield, TX 76063

M&S Transport
752 W. Main, No. 1418
Mansfield, TX 76063

and by ELECTRONIC FILING on:

Marcus Leinart
10670 N. Central Expressway, Suite 320
Dallas, TX 75231

Tim Truman
6851 N.E. Loop 820, Suite 300
North Richland Hills, TX 76180

Office of the U.S. Trustee
1100 Commerce, Room 976
Dallas, Texas 75242

on August 31, 2023.

/s/ Stephen G. Wilcox
Stephen G. Wilcox

SUMMARY OF EXHIBITS

1. Vehicle Retail Installment Contract dated September 14, 2021 on a 1993 International, Vehicle Identification Number 2HSFHD6R0PC072942.
2. Certificate of Title on a 1993 International, Vehicle Identification Number 2HSFHD6R0PC072942.
3. Vehicle Retail Installment Contract dated August 21, 2019 on a 2014 Peterbilt, Vehicle Identification Number 1NPWD49X4ED241610.
4. Certificate of Title on a 2014 Peterbilt, Vehicle Identification Number 1NPWD49X4ED241610.
5. Vehicle Retail Installment Contract dated August 21, 2019 on a 2014 Cottrell AC, Vehicle Identification Number 5E0AA1440EG540001.
6. Certificate of Title on a 2014 Cottrell AC, Vehicle Identification Number 5E0AA1440EG540001.
7. Vehicle Retail Installment Contract dated May 1, 2019 on a 2012 Peterbilt 388, Vehicle Identification Number 1NPWD49X1CD155216.
8. Certificate of Title on a 2012 Peterbilt 388, Vehicle Identification Number 1NPWD49X1CD155216.
9. Vehicle Retail Installment Contract dated May 1, 2019 on a 2012 Cottrell CX-7, Vehicle Identification Number 5E0AC144XCG371502.
10. Certificate of Title on a 2012 Cottrell CX-7, Vehicle Identification Number 5E0AC144XCG371502.
11. Vehicle Retail Installment Contract dated November 22, 2021 on a 2014 Peterbilt, Vehicle Identification Number 1NPWE49X9ED241621.
12. Certificate of Title on a 2014 Peterbilt, Vehicle Identification Number 1NPWE49X9ED241621.
13. Affidavit of Kevin Arthur Ray.

*Copies of Exhibits are available by written request to:

Kim Raudry
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P.O. Box 201849
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8361-00009-568315